

## **REMARKS**

Claims 1-26 were previously canceled. Upon entry of this amendment Claims 27-35 will be pending.

### **Drawings**

A petition under 37 C.F.R. § 1.84(a)(2), including the requisite fee and three copies of the color drawings are filed herewith. The application was previously amended in the Preliminary Amendment filed September 26, 2003, to include the necessary language in the first paragraph of the brief description of the drawings section of the specification.

### **Claim Rejections - 35 U.S.C. § 102(b)**

In the Non-Final Office Action mailed October 17, 2007, the Examiner rejected claims 27-35 under 35 U.S.C. § 102(b) as being anticipated by WO/94/21288 (hereinafter, “the ‘288 application”) as evidenced by Van Den Pol (Quarterly Journal of Experimental Physiology, 1984, 60:1-33) and NCBI MeSH, Tumor Necrosis Factor-alpha, and WO/95/249118. A published patent application is prior art under 35 U.S.C. § 102(b) as of its publication date. The publication date of the ‘288 application is September 29, 2004. The present application claims priority to U.S. Patent Application No. 08/215,030, filed March 18, 1994. Therefore, the ‘288 application is not a proper reference under 35 U.S.C. § 102(b). Applicants respectfully request the Examiner reconsider and withdraw the ‘288 application as a reference under 35 U.S.C. § 102(b).

### **Claim Rejections - Double Patenting**

In the Non-Final Office Action mailed October 17, 2007, the Examiner provisionally rejected claims 27-35 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 33-35 and 45 of copending U.S. Application No. 09/189,657.

Applicants will consider filing a terminal disclaimer once allowable subject matter is found in one or both of the applications.

### **CONCLUSION**

The foregoing is submitted as a full and complete response to the Final Office Action mailed October 17, 2007, and early and favorable consideration of the claims is requested. If the Examiner believes any informalities remain in the application that may be corrected by Examiner's amendment, or there are any other issues which can be resolved by telephone interview, a telephone call to the undersigned agent at (404) 572-2447 is respectfully solicited.

No further fees are believed to be due in connection with this response. However, the Commissioner is hereby authorized to charge any underpayment or credit any overpayment of fees to Deposit Account No. 11-0980.

Respectfully submitted,

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